

REIMBURSEMENT AGREEMENT FOR MIDVALLEY ROAD IMPROVEMENTS

Devl. No. ____

This REIMBURSEMENT AGREEMENT FOR MIDVALLEY ROAD IMPROVEMENTS (the “**Agreement**”) is entered into this ____ day of _____, 2013, between the STATE OF UTAH, through the SCHOOL AND INSTITUTIONAL TRUST LANDS ADMINISTRATION, 675 East 500 South, Suite 500, Salt Lake City, Utah 84102 (the “**Trust Lands Administration**”), and EAGLE MOUNTAIN CITY, a Utah municipal corporation, 1650 East Heritage Drive, Eagle Mountain, Utah 84005 (the “**City**”).

RECITALS

A. The Trust Lands Administration owns an approximately 1,100-acre parcel of land within the City, which parcel is approved for residential, commercial and mixed use development (the “**Trust Lands Property**”).

B. The Trust Lands Administration has sold a 25-acre parcel of land that was part of the Trust Lands Property to Alpine School District for a middle school site (the “**School Site**”). As a condition of this sale, the Trust Lands Administration agreed to construct certain offsite roads and public utilities that will benefit the School Site and other parts of the Trust Lands Property.

C. The Trust Lands Administration has completed construction on the majority of the offsite improvements it agreed to construct for the School Site, and has dedicated these completed improvements to the City; however, several offsite improvements associated with the School Site still need to be constructed. A description of these remaining improvements (the “**Trust Lands Administration Improvements**”) is attached hereto as **Exhibit A**, and the engineering plans (the “**Plans**”) for the Trust Lands Administration Improvements are attached hereto as **Exhibit B**. The Trust Lands Administration Improvements will all be constructed on land owned by the City.

D. The City intends to hire a contractor to perform construction activities to City property in the vicinity of the School Site (the “**City Improvements**”). The City has agreed to include the Trust Lands Administration’s Improvements in the work to be performed by the City contractor, provided the Trust Lands Administration reimburses the City for such work. Together, the construction work associated with both the Trust Lands Administration Improvements and the City Improvements will be referred to as the “**Project**”.

AGREEMENT

1. Project Management and Inspection. The City will contract with one or more third parties (“**Contractor(s)**”) for the construction of the Project. The Trust Lands Administration Improvements will be constructed in accordance with the Plans, this Agreement, and all applicable laws and regulations. The City shall manage the Project, but the Trust Lands Administration and its representatives may inspect the construction work associated with the Trust Lands Administration Improvements at any time.

2. Trust Lands Administration Approvals. The City will select the Contractors for the Project through a competitive bid process. Prior to entering into a contract with a Contractor (“**Construction Contract(s)**”) that includes the Trust Lands Administration Improvements, the City will: (a) provide the Trust Lands Administration with information on its selected Contractor, including information on the Contractor’s licensing, bonding obligations, insurance coverage, and other relevant information; (b) provide the Trust Lands Administration with a written cost estimate (the “**Cost Estimate**”) provided by the Contractor for the work associated with constructing the Trust Lands Administration Improvements; and (c) receive the Trust Lands Administration’s written approval of the proposed Contractor and the Cost Estimate.

3. Terms of Construction Contracts. All Construction Contracts entered into by the City with respect to the Project shall include the following requirements:

a. Licensed Contractors. All Contractors and any subcontractors for the Project shall maintain the appropriate State of Utah contractor’s license through the duration of the Contractors’ or subcontractors’ work on the Project.

b. Performance and Payment Bonding. All Contractors shall provide a performance bond at the time of the execution of the Construction Contract in the amount of at least one hundred percent of the contract price. The Trust Lands Administration shall be listed as a co-beneficiary with the City on each of the performance bonds. All Contractors shall also provide payment bonds in the amount of at least one hundred percent of the payment obligations arising under the Construction Contract, for the protection of each person supplying labor, service, equipment or materials for the performance of the Project.

c. Compliance with Applicable Law. All Contractors and subcontractors for the Project shall comply with all applicable federal, state, county and municipal laws, ordinances and regulations while performing work under the Project, including applicable environmental laws.

d. Construction Quality. The Contractors shall construct the Trust Lands Administration Improvements in a first class workmanlike manner, in substantial compliance with the Plans, City requirements, and in accordance with all other applicable design and construction standards.

4. Changes Orders and Cost Overruns. In the event the Contractor requests a change order that affects the Trust Lands Administration Improvements, the City shall provide the Trust Lands Administration with a written request for such change order before giving the Contractor approval to proceed. Both the Trust Lands Administration's approval to a proposed change order, and any change order between the City and a Contractor, shall be in writing. In the event costs associated with the Trust Lands Administration Improvements are anticipated to exceed the Cost Estimate, whether because of a change order or for any other reason, the City shall notify the Trust Lands Administration in writing of such anticipated overrun and shall not approve any work associated with the cost overrun until the Trust Lands Administration has given written approval for the additional expenses.

5. Reimbursement. The City will submit invoices to the Trust Lands Administration periodically during the Project (no more frequently than once a month) for costs associated with the Trust Lands Administration Improvements. City invoices shall itemize the Contractors' costs attributable to the Trust Lands Administration Improvements and shall include copies of the applicable Contractor invoices. The Trust Lands Administration will only approve invoices for: (a) completed work; (b) that materially complies with the Plans; and (c) that otherwise complies with the provisions of this Agreement. The Trust Lands Administration may hire a third party to inspect the Trust Lands Administration Improvements upon completion of such improvements. The Trust Lands Administration will not reimburse the City for staff time or other such "soft" costs. The Trust Lands Administration will approve or disapprove of the proposed invoice in writing, and will reimburse the City for the costs in the approved invoice within thirty (30) days of receipt of the invoice. In the event work on the Trust Lands Administration Improvements is not completed on or before June 30, 2014 (the end of the Trust Lands Administration's 2013-2014 fiscal year), payment for any work performed after such time will be subject to annual appropriation.

6. Ownership of Trust Lands Administration Improvements. City shall own all Trust Lands Administration Improvements upon completion of such improvements.

7. Events of Default. In the event of a default or breach of any of the terms of this Agreement, either party may with thirty (30) days prior written notice seek damages for any and all violations or defaults with or without terminating this Agreement. In the event the non-breaching party deems the breach or default to constitute a threat to safety, life, or property, it may elect to intervene immediately, without notice, to remedy the breach or default, and the breaching party shall pay all costs in remedying the breach or default upon demand, together with interest thereon from the date of expenditure. Alternatively, the nonbreaching party may immediately act itself to remedy the breach or default.

8. Agreement Binding. This Agreement shall be binding upon and inure to the benefit of the Trust Lands Administration and the City, their successors and assigns.

9. Choice of Law. This Agreement shall be interpreted in accordance with the laws of the State of Utah.

10. Authority. The individuals executing this Agreement hereby warrant and represent they are duly authorized to do so in the capacity stated, and to bind the entities for which they are executing this Agreement.

11. No Partnership. Nothing in this Agreement is intended to, or shall be deemed to, constitute a partnership or joint venture between the Parties.

12. Assignment. Neither the City nor the Trust Lands Administration shall assign this Agreement to anyone except with the prior written consent of the other party.

13. Entire Agreement. This Agreement and the exhibits hereto constitute the entire agreement between the parties with respect to the subject matter hereof, incorporates all prior agreements, and may only be modified by a subsequent writing duly executed by the parties.

14. No Waiver. No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver be a continuing waiver. Except as expressly provided in this Agreement, no waiver shall be binding unless executed in writing by the party making the waiver. Either party may waive any provision of this Agreement intended for its own benefit; ***provided, however,*** such waiver shall in no way excuse the other party from the performance of any of its other obligations under this Agreement.

15. Severability. If any term or provision of this Agreement or the application of it to any person, entity or circumstance shall to any extent be invalid and unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

16. Notice. Any notice contemplated herein shall be in writing and shall be deemed sufficient if deposited in the United States mail, postage prepaid and certified or registered, and addressed to those addresses first set forth herein.

IN WITNESS WHEREOF, the parties have entered into this Agreement.

STATE OF UTAH
SCHOOL AND INSTITUTIONAL
TRUST LANDS ADMINISTRATION

EAGLE MOUNTAIN CITY

Kevin S. Carter, Director

Heather A. Jackson, Mayor

Approved as to form:

Attest: _____

Michelle E. McConkie, Special Asst. Atty. Gen.

STATE OF UTAH)
 : §.
COUNTY OF SALT LAKE)

On the _____ day of _____ 2013, personally appeared before me Kevin S. Carter, who being by me duly sworn did say that he is the Director of the School and Institutional Trust Lands Administration of the State of Utah, and the signer of the above instrument, who duly acknowledged that he executed the same.

Given under my hand and seal this _____ day of _____ 2013.

My commission expires:

Notary Public, residing at:

Exhibit A

Scope of Trust Lands Administration Improvements

Preliminary Estimate of Probable Costs

Date: 04-02-13

Project: 12-074

Name: Offsite Improvement for Eagle Mountain Middle School

Subject: Misc. work related to the offsite improvements for Eagle Mountain Middle School

Task	Description	Quantity	Unit	Unit Price	Total Value
Pony Express Parkway					
1	Mobilization	1	l.s.	\$ 1,000.00	\$ 1,000.00
2	Sawcut existing asphalt	450	l.f.	\$ 1.15	\$ 517.50
3	Remove and dispose of existing asphalt	450	s.f.	\$ 3.50	\$ 1,575.00
4	Subgrade preparation and fine grading	1	l.s.	\$ 5,000.00	\$ 5,000.00
5	Const. asphalt on northbound lane	2,500	s.f.	\$ 3.00	\$ 7,500.00
6	Const. asphalt on southbound lane	800	s.f.	\$ 3.00	\$ 2,400.00
7	Striping Midvalley Road and Pony Express Parkway for 3-way intersection	1	l.s.	\$ 5,000.00	\$ 5,000.00
8	Install Stop Sign (City has developer-supplied stop signs)	3	ea	\$ 150.00	\$ 450.00
Misc. Midvalley Road					
9	Mobilization	1	l.s.	\$ 1,000.00	\$ 1,000.00
10	Sawcut median curb for Pony Express Trail crossing	30	l.f.	\$ 1.15	\$ 34.50
11	Remove and replace curb and gutter	70	l.f.	\$ 15.00	\$ 1,050.00
12	Const. 15" culvert under east entrance to middle school	120	l.f.	\$ 30.00	\$ 3,600.00
13	Sawcut asphalt for culvert under east entrance to middle school	240	l.f.	\$ 1.15	\$ 276.00
14	Remove and dispose of asphalt	500	s.f.	\$ 3.50	\$ 1,750.00
15	Const. asphalt t-patch	500	s.f.	\$ 3.00	\$ 1,500.00
16	Const. 15" culvert for Pony Express Trail crossing	20	l.f.	\$ 30.00	\$ 600.00
17	Install gravel surface (1/2" minus gravel) over swale crossing and to existing Pony Express Trail gravel roadway (±3 truck loads)	1	l.s.	\$ 600.00	\$ 600.00
18	Re-grade existing bio-swale for Pony Express Trail crossing	20	l.f.	\$ 15.00	\$ 300.00
19	Const. trail crossing bollard with trail crossing sign	2	ea.	\$ 250.00	\$ 500.00
20	Install "No Parking" signs along Midvalley Road	1	l.s.	\$ 1,500.00	\$ 1,500.00
21	Install road crossing bollard with embedded stop sign for pedestrian/bike crossing at the Pony Express and Midvalley Road intersection	2	ea.	\$ 250.00	\$ 500.00
Subtotal					\$ 28,560.50
20% Contingency					\$ 5,712.10
Grand Total					\$ 34,272.60

REVISION BLOCK	DATE	DESCRIPTION
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MIDVALLEY ROAD PROJECT

EAGLE MOUNTAIN CITY, UTAH COUNTY, UTAH

LEGEND

EXISTING ROAD

PROPOSED ROAD

PROPOSED SIDEWALK

PROPOSED CURB

PROPOSED DRAINAGE

PROPOSED UTILITIES

PROPOSED FENCE

PROPOSED SIGN

PROPOSED LIGHTING

PROPOSED LANDSCAPING

PROPOSED PARKING

PROPOSED TRAIL

PROPOSED BIKEWAY

PROPOSED BICYCLE LANE

PROPOSED BICYCLE PATH

PROPOSED BICYCLE ROUTE

PROPOSED BICYCLE CORridor

GRAPHIC SCALE

1" = 100'

1" = 200'

1" = 300'

1" = 400'

1" = 500'

1" = 600'

1" = 700'

1" = 800'

1" = 900'

1" = 1000'

FOCUS

ENGINEERING AND SURVEYING, LLC

40 WEST 800 SOUTH

SANDY, UTAH 84070 P.O. BOX 352-0077

www.focuseng.com